THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, the 20th day of August,2007

W.P.No.15580 of 1996

Between:-

G. Satyanarayana … Petitioner

and

The Chairman, A.P. State
Warehousing Corporation,
Hyderabad and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.15580 of 1996

ORAL ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to and in connection with the Proceedings No. SWC/E6/1069/94, dated 4-10-1995 of the 1st respondent in confirming the Order of dismissal passed by the 2nd respondent in Proceedings No.SWC/E6/1069/94, dated 16-11-1994 and quash the same as arbitrary, illegal and violative of principles of natural justice.

It appears, petitioner while working as Warehouse Manager of the respondent-Corporation was dismissed from service by the 2nd respondent on the allegation that he had manipulated the records etc., after conducting a detailed enquiry. Aggrieved by the same, he had filed an appeal before the 1st respondent and the same was also dismissed. Challenging the same, the present Writ Petition is filed.

There is no necessity of going into all the details. It is alleged by the petitioner that the complainant himself was appointed as an Enquiry Officer and he had framed the charges and conducted enquiry, which resulted in bias and prejudice to his interest. It is contended by the learned counsel for the petitioner that a person, who complained, cannot be an Enquiry Officer, in the same case. In this regard, learned counsel relied upon a Judgment reported in **M.G. THATTE v. UNION OF INDIA AND OTHERS**[1] wherein a Division Bench of this Court held as under:

> "A reading of Rule 44(2) of the Railway Protection Force Rules would make it abundantly clear that it is the disciplinary authority, which must frame the charges. In this case, it was the Assistant Security Officer, who had originally framed charges and had called upon the petitioner to file his explanation. He was straightaway appointed the Enquiry Officer to conduct the enquiry. This is in clear violation of Rule 44(2). The disciplinary authority, in this case, the Assistant Security Officer as he did not continue to be disciplinary authority after he surrendered his authority to the Assistant Security Officer. The whole enquiry is vitiated.
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> It is now fairly settled that an Officer who has something to do with the case earlier or who had framed the charges or formed an opinion cannot be appointed as Enquiry Officer. He would have bias in such cases. It is equally well-settled that it is not in such a case necessary that in fact there has occurred any prejudice to the delinquent officer. If there is a likelihood of bias or even possibility or risk of it, it is enough to quash the proceedings on the ground of bias. It goes to the very root of the jurisdiction of the enquiry officer."

In view of the admitted fact that the Officer, who complained against the petitioner, was appointed as Enquiry Officer and he framed the charges and conducted the enquiry, the impugned Order passed by the 2nd respondent as confirmed by the 1st respondent is liable to be set aside and is accordingly set aside.

In the result, the Writ Petition is allowed. It is made clear that the petitioner is entitled for all the consequential benefits. No order as to costs.

20-8-2007

prk

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[1] 1974 AISLJ (Lxvii) 52 (Short Notes)